



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Robert P. Corker, Jr.
832 Georgia Avenue, Suite 200
Chattanooga, TN 37402

MAR 20 2007

RE: MUR 5790
Robert P. Corker, Jr.

Dear Mr. Corker:

On August 15, 2006, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 6, 2007, the Commission found no reason to believe that you violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.22(a) with respect to the Form 10 that was sent by overnight mail to the Secretary of the Senate and irradiated. Additionally, in an exercise of prosecutorial discretion, the Commission dismissed the allegations that you violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.21(a) with respect to the Form 10 that was filed one day late. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter.

The Commission reminds you that a Senate candidate must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes an expenditure from personal funds exceeding two times the threshold amount, and must do so within 24 hours. 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). You should take steps to ensure compliance with this provision in the future.


Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the Factual and Legal Analysis explaining the Commission's decision is enclosed for your information.

27044161464

If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at 202-694-1650.

Sincerely,

Thomasenia P. Duncan
Acting General Counsel

BY: 
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Enclosure
Factual and Legal Analysis

27044161465

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Robert P. Corker Jr.

MUR 5790

5
6
7 **I. INTRODUCTION**

8
9 This matter concerns reporting requirements arising under the so-called "Millionaires'
10 Amendment." The complaint alleges that Robert P. Corker Jr. ("Corker"), a 2006 Tennessee U.S.
11 Senate candidate, failed to timely file two 24-Hour Notices of Expenditures of Personal Funds
12 ("Form 10s") for loans to his campaign committee, Bob Corker for Senate and Kim Kaegi, in her
13 official capacity as treasurer (the "Committee"), from Corker's personal funds.

14 Based on the reasons outlined below, the Commission exercised its prosecutorial discretion
15 to dismiss with admonition the allegations pertaining to the late filing of his initial Form 10. The
16 Commission found no reason to believe that Corker failed to timely file a subsequent Form 10 and
17 closed the file as to him.

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Factual Background**

20 Corker, who filed his Statement of Candidacy with the Commission on October 14, 2004,
21 made \$2,100 in expenditures from his personal funds for his primary election campaign between
22 that date and mid-July 2005. For a year thereafter, he made no further expenditures from personal
23 funds. Then, between July 3 and July 18, 2006, Corker made three loans in the amounts of
24 \$200,000, \$445,000, and \$1,100,000, respectively. The last loan raised his total expenditures of
25 personal funds with respect to the primary election to \$1,747,100, and triggered the reporting

27044161466

requirements of the Millionaires' Amendment.¹ On July 19, 2006, the Committee faxed a Form 10 to the Secretary of Senate, which disclosed the loans made on July 3, July 10, and July 18, 2006; the fax time stamp on this document reads "07/19/06 WED 22:44 [10:44 p.m.]."² The Secretary of the Senate acknowledged receipt of this document on July 20, 2006 via a time-stamp at 7:21 a.m. According to the Respondent, the Committee also notified the opposing candidates, Van Hilleary and Ed Bryant, of the Form 10. In his response, he included letters from representatives of those committees acknowledging timely receipt. *See Response.* However, neither Corker or the Committee ever transmitted a copy of the Form 10 to the Commission.

On July 25, 2006, Corker made another loan to the Committee in the amount of \$420,000, increasing his total expenditures from personal funds to \$2,167,100. This time the Committee directly notified the Commission via facsimile on July 26, 2004, within 24 hours of the expenditure. As with the initial Form 10, representatives of Corker's opponents aver that their campaigns also timely received this Form 10. However, this time Corker and the Committee mailed the Form 10. The Secretary of the Senate's time stamp on the document bears the date of August 4, 2006.

The Respondent maintains that the two Form 10s were filed timely based on the facsimile transmission dates and times on the initial Form 10 for the July 18, 2006 expenditure, and on the subsequent Form 10 for the July 25, 2006 expenditure.

¹ The threshold amount is the sum of \$150,000 plus an amount equal to the voting age population of the state multiplied by 4 cents. *See* 11 C.F.R. § 400.9. In the case of Tennessee in 2006, the threshold amount was \$332,880 (\$150,000 + (\$4,572,000 x .04). Two times that threshold amount is \$665,760 (\$332,880 x 2).

² Within four minutes, Corker and the Committee faxed another version of its initial Form 10 to the Secretary of the Senate identical to the previously faxed Form 10 with the exception of the date; the original faxed Form 10 is dated "6-19-6" and the second amends the date to read, "7-19-6" On Friday, July 21, 2006, Corker and the Committee faxed to the Secretary of the Senate another Form 10 that added the \$2,100 in earlier contributions in the space on the form for "expenditures reported previously in the election cycle." The Secretary of the Senate time stamped this form on Monday, July 24, 2006 and forwarded it to the Commission, which received it on that day.

27044161467

B. Analysis

A Senate candidate or his or her principal campaign committee must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes an expenditure from personal funds exceeding two times the threshold amount. 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). This notification must be received within 24 hours of the time such expenditure is made, *id.*, and notifications will be considered timely filed if received by facsimile or email by each of the appropriate parties within that time period. 11 C.F.R. § 100.19(g). For each additional expenditure aggregating \$10,000 or more, the candidate or his or her principal campaign committee is also required to notify the Secretary of the Senate, the Commission and each opposing candidate in a Form 10 filing within 24 hours of the time such expenditure is made. *See* 2 U.S.C. §§ 434(a)(6)(B)(iv) and (v); 11 C.F.R. § 400.22(a). Although the committee treasurer signs a Form 10, the candidate is responsible for ensuring that it is filed in a timely manner. *See* 11 C.F.R. § 400.25.

Corker's \$1,100,000 loan on July 18, 2006 caused his total personal expenditures for the primary election to exceed \$665,760, the amount representing two times the threshold amount. *See* footnote 1. Therefore, Corker and the Committee were required to notify the Secretary of the Senate, the Commission and the candidate's opponents in a Form 10 filing within 24 hours of making the expenditure, or by July 19, 2006. Although Corker and the Committee timely notified the Secretary of the Senate and Corker's opponents by facsimile on July 19, 2006, they did not directly notify the Commission of these expenditures at all. When the Secretary of the Senate notified the Commission of the Form 10 on July 20, 2006, the 24-hour deadline had passed.

27044161468

Corker and the Committee failed to timely notify the Commission of the initial Form 10.

However, the Commission received the initial Form 10 only one day late; the Secretary of the Senate and Corker's opponents were timely notified. Therefore, the Commission, as a matter of prosecutorial discretion, has decided to dismiss with admonition the allegation in the complaint that Robert P. Corker Jr. violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.21(a) by failing to timely file his initial Form 10 to the Commission. *See Heckler v. Chaney*, 470 U.S. 831 (1985).

As for the Form 10 that disclosed a \$420,000 personal loan made by the candidate on July 25, 2006, Corker and the Committee timely notified both the Commission and his primary opponents on July 26, 2006. Rather than faxing the Form 10 to the Secretary of the Senate as it had with the initial Form 10, Corker mailed it. The Secretary of the Senate time-stamped its receipt of this Form 10 on August 4, 2006, after the 24-hour deadline had passed.

The Instructions to Form 10 provide only a physical address and a P.O. box for the Secretary of the Senate, not a facsimile number or an e-mail address. However, because all outside mail is first physically received off-site for irradiation, a process that can take several days, even when the Senate's contractor timely receives the mailings, the Secretary of the Senate's time-stamps will not reflect their receipt within 24 hours.

Therefore, the Commission finds no reason to believe that Robert P. Corker Jr. violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.22(a) in connection with his subsequent Form 10 filing.

27044161489